



General principles (Art. 68 (1) and (2) UPCA)

- The infringer shall have engaged the infringing activity knowingly
- Damages correspond to the harm actually suffered
- The patentee is placed back in the position he would have been in absence of infringement
- The infringer shall not benefit from the infringement
- Damages shall not be punitive

Scope of the damages (<u>R. 125</u>)

In addition to infringement, damages include compensation in case of:

- revocation of an order to preserve evidence (R. 198-2)
- revocation of provisional measures (R. 213-2)
- enforcement of a decision or an order subsequently revoked or varied (R. 354-2)

General principles (Art. 68 (1) and (2) UPCA)

1st method:

- negative economic consequences, including lost profits suffered by the patentee
- unfair profits made by the infringer
- moral prejudice

2nd method:

lump sum at least equal to the amount of a licence fee

Remark:

If the infringer did not act knowingly:

- recovery of profits, or
- payment of compensation

Procedure

Order of payment with the decision on the merits (<u>R. 118-1</u>)

Alternatively: separate proceedings (R. 125)

Possibility of an interim award of damages in the decision on the merits (R. 119) or in the decision on the damages (R. 150-2)

Determination of damages in separate proceedings Decision on damages (Art. 68 UPCA) Assessment of the amount of damages by the patentee (R. 131-2) Examination of the communicated data Refusal Order to open books Rejoinder to the Reply Decision on the (R. 139) request to lay open books (R. 144) 1 month Rejoinder to the Reply (<u>R. 142–3</u>) Reply to the Defence (R. 139) 14 days Reply to the Defence (<u>R. 142-3</u>) 1 month 14 days Acceptation Defence Acceptation Defence (R. 137-2, R. 138) (<u>R. 137-1</u>) (<u>R. 142-1</u>) (<u>R. 142-2</u>) 2 months 2 months Application for the Application for the determination of damages determination of damages with assessment of the amount of damages with request to lay open books (R. 131) (R. 131, R. 141) < 1 year Decision on the merits



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